

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO

NORBERTO MORALES RIVERA

Petitioner

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* CIVIL NO. 04-2306 (JAF)

* CRIMINAL No. 99-185 (H L)

v.

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UNITED STATES OF AMERICA

Respondent

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**UNITED STATES OPPOSITION TO PETITIONER'S MOTION
FOR RECONSIDERATION AND/OR CERTIFICATE OF APPEALABILITY**

COMES NOW the United States of America, by and through the
undersigned attorneys and very respectfully states and prays as follows:

1. The above captioned Petitioner has filed a motion requesting
reconsideration of the Order of this Court (Document 50) of August 6, 2007
adopting the Report and Recommendation of Hon. Justo Arenas, United
States Magistrate Judge. Minutes after the filing of the above motion,
Petitioner, through his counsel of record, also filed a "Notice of Appeal
(Document 51)".

2. It is respectfully submitted that the appeal taken by Petitioner in
this case, has divested this Honorable Court of jurisdiction to further
entertain matters related to this case, including the reconsideration
requested. See United States v. Brooks, 145 F.3d 446, 457 (1st. Cir. 1998).

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The United States further submits that as a general rule, the filing of a notice of appeal "divests a district court of authority to proceed with respect to any matter touching upon, or involved in the appeal." United States v. Mala, 7 F.3d 1058, 1061 (1st. Cir. 1993). Shared jurisdiction almost always portends a potential for conflict and confusion. See United States v. Ienco, 126 F.3d 1016, 1018 (7th. Cir. 1997). Allowing more than one court to take charge of a case at any given moment often disserves the interest of comity and judicial economy. See Shewchun v. United States, 797 F.2d 941, 943 (11th. Cir. 1986).

3. In opposition to defendant's motion for reconsideration, the United States adopts all the allegations contained in its prior motion of February 27, 2006, and respectfully resubmits them to this Honorable Court.

4. A perusal of the history of this case, through the docket entries, reveals that during the span of time where the alleged negotiations towards a plea agreement were taking place, defendants continued to file dispositive motions. On September 5, 2000, Petitioner Morales-Rivera filed six (6) motions, among them, a motion to dismiss the Indictment, a motion for a bill of particulars, a motion for disclosure of exculpatory evidence, a motion to produce, a motion in-limine and a motion to suppress the result of certain interceptions (D.E. 172-178). All the above motions were referred to a Magistrate-Judge and on March 22, 2001, the Magistrate-Judge issued a

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Report and Recommendation regarding all petitioner's motions (D.E. 217).

On April 3, 2001, a Superseding Indictment was returned adding a new defendant to Count One of the original Indictment (D.E. 219). On July 3, 2001, Petitioner filed a motion to suppress seized items and a request to be transferred to the general population (D.E. 245 and 246). On January 30 2002, petitioner filed a subsequent motion to dismiss (D.E. 274). This motion was denied by the District Court on March 4, 2002 (D.E. 285). The Court also denied motions to suppress seized items and interceptions. On April 3, 2002, the Hon. Brock Hornby, United States District Judge (siting by designation) denied defendant's motion to dismiss the Indictment for Violations of the Speedy Trial Act, Title 18, U.S.C §3161 to 3174 (1994). It should be noted that Pedro Bonilla Marengo¹ had joined this motion. This action by defendant Pedro Bonilla Marengo belies the alleged finality of the plea negotiations as testified to by counsel Inserni. An alleged plea offer cannot forever bind the government when defendants continue to file motions whose dispositive effects might terminate government's case. The government is not compelled to wait until defendants have exhausted all available remedies and motions to dismiss. See United States v. Gonzalez, 219 F.3d 37, at page 43 (1st. Cir 2000). If any of the persons offered the "package plea" rejects the same, then none of the others included in the

¹ Represented by counsel Frank Inserni.

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package can enforce the plea on the government even if they were in conformity with the terms offered. At this stage it does not really matters if Petitioner would have accepted the offer in the so called "package plea" or if his attorney failed to notify him.

Wherefore, the United States respectfully requests that Petitioner's motion for reconsideration be, DENIED.

San Juan, Puerto Rico, this 4th. day of September, 2007.

Respectfully submitted.

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CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2007, I electronically filed the foregoing document with the Clerk of the Court Cm/ECF system which will send notification of such filling to:

1. Hector L. Ramos Vega, Esq.
2. Francisco Varcarcel-Fuster, Esq.

S/ Antonio R. Bazán
Senior Litigation Counsel